D.B. CIVIL SPECIAL APPEAL (W) NO.188/2007

Anuj Chachan.

Vs.

The Bikaner University and Anr.

DATE OF ORDER :: 18.5.2007

HON'BLE MR JUSTICE RAJESH BALIA
HON'BLE MR JUSTICE BHANWAROO KHAN

Mr. Kishan Bansal, for the appellant.
Mr. LR Upadhyaya, Deputy Govt. Advocate.
Mr. DD Chitlangia, for the respondents.

We have heard learned counsel for the parties.

This appeal is directed against the Order of the learned Single Judge dismissing the writ petition filed by the appellant. The facts which are not in dispute before us and which are necessary for the present purposes are that the petitioner was first admitted to B.Com. Ist year examination 2005 of three years degree course under the Rajasthan University as a regular candidate. The examination was held for B.Com. Ist year and petitioner had secured 309 marks out of total marks 600 having passed in all subjects except in general English, which is one of the compulsory subject in Ist year of Three year degree course, under the scheme of University of Rajasthan. As per the scheme the candidate could not have been declared as failed in

part-Ist examination 2005 because under the syllabus he could pass in general English paper in three attempts that is to say until he passes out Ist year, IInd year and IIIrd year of B.Com course, he had the opportunities to clear the examination of General English as compulsory subject. That is why his mark-sheet stated passed in optional subjects only. He was promoted to IInd year of TDC examination notwithstanding having not passed in English as per Ordinance of Rajasthan University, he was a IInd year student.

It appears that due to circumstances of the petitioner he migrated to Nohar and was admitted to IInd year part of TDC in Government College at Nohar which was affiliated to Bikaner University and he was allowed to migrate in terms of Bikaner University Act and Ordinance made thereunder.

In the first instance, the petitioner was informed by letter dtd. 18.4.2006 that until he has not submitted the original migration certificate, he cannot be permitted to take examinations and he was required to furnish undertaking in order to be admitted in the examination that he will submit the original migration certificate by 25.4.2006 with late fees. The original migration certificate was forwarded by Principal, Government College, Nohar to the University of Bikaner vide letter dtd. 25.4.2006 and it duly reached. However, when the result of B.Com. Part II of the

petitioner was not declared. He was informed by letter dated 19.4.2006 that he was required to present the original mark-sheet of B.Com Part Ist as passed candidate, but the same has not been produced therefore, B.Com. Examination of the petitioner was cancelled.

This led to filing of the writ petition. The petition was dismissed in limine by the learned Single Judge by observing that the petitioner has admittedly failed in one of the compulsory subjects in the Ist year and the learned Single Judge finding no error in cancellation of the IInd year Examination, dismissed the writ petition summarily.

The reply has been submitted here in the special appeal after notices were issued to the respondents. Apparently, the judgment under appeal has been founded without examining the scheme of examination of three year degree course of Rajasthan University or Bikaner University before declaring the appellant to have failed.

Admittedly, petitioner having failed in one subject namely general English, was eligible to be promoted to IInd year examination under the scheme of Rajasthan University had he continued with the Rajasthan University. The position of the petitioner cannot be classified as having failed in Ist year

examination by any imagination. The petitioner as per his result declared by the University of Rajasthan was entitled to be promoted and admitted to B.Com. IInd year examination as a matter of right. That being the position if the migration was permissible and petitioner could be migrated to another University he could be migrated to IInd year examination of the other University and validity of migration is not in question.

Once, the validity of migration is not in question then it must be held that the migration of the petitioner and his admission to IInd year examination in the college affiliated to Bikaner University was a valid migration and admission in IInd year examination had rightly been made. The fact that under the scheme of Bikaner University a candidate of IIIrd year degree in commerce was not required to pass in both language together i.e. Hindi and English but was required to pass only one of the subjects and he was not required to pass English in the IInd year and IIIrd year as per syllabus of Bikaner University under which alone petitioner was perusing his studies cannot be held against the petitioner. The fruits of his continued studies in terms of migration granted to the petitioner by admitting him to IInd year examination under Bikaner University cannot be nullified by taking a stand which is not justified under the scheme of examination itself.

We may also notice that so far as Three year course is concerned, the result, passed, failed or supplementary, is allowed at the end of IIIrd year course. In between and till then he is only to be promoted to the IInd and IIIrd year. As on now there is no dispute that petitioner was entitled to be otherwise promoted to IInd year under the Rajasthan University. By ignoring this basic ground, the learned Single Judge has erred in dismissing the writ petition and sustaining the cancellation of IInd Year Examination.

Accordingly, the appeal is allowed. The order under appeal is set-aside. As a result, the writ petition is allowed. Since the petitioner has already been admitted to IIIrd year examination after having successfully passed IInd year examination, we direct that result of the petitioner of IIIrd year be declared and he is allowed to retain his result. Cancellation of IInd year examination taken by the petitioner-appellant is quashed.

(BHANWAROO KHAN),J. (RAJESH BALIA),J.

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